

Opinion

Chief Justice:
Clifford W. Taylor

Justices:
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman

FILED JUNE 13, 2008

In re Honorable BEVERLEY
NETTLES-NICKERSON, Judge, 30th
Circuit Court.

No. 133929

BEFORE THE ENTIRE BENCH

MEMORANDUM OPINION.

On June 11, 2008, the Court heard oral argument from the parties concerning the Judicial Tenure Commission's findings and recommendations in this matter. The Judicial Tenure Commission's Decision and Recommendation for Order of Discipline is attached as an exhibit to this opinion.

We adopt in part the recommendations made by the Judicial Tenure Commission and order that the respondent is removed from office, effective immediately, on the basis of the following misconduct:

- (1) Respondent twice made false statements under oath in connection with her divorce proceeding (Count I);
- (2) Respondent made and solicited other false statements while not under oath, including the submission of fabricated evidence to the Judicial Tenure Commission (Count II);
- (3) Respondent improperly listed cases on the no-progress docket (Count III);

(4) Respondent was absent excessively and engaged in belated commencement of proceedings, untimely adjournments, and improper docket management (Count IV);

(5) Respondent allowed a social relationship to influence the release of a criminal defendant from probation (Count VI); and

(6) Respondent recklessly flaunted her judicial office (Count IX).

See page 2 of the Judicial Tenure Commission's Decision and Recommendation for Order of Discipline in the attached exhibit.

The respondent is no longer a judicial officer and will not be an incumbent at the time of the 2008 30th Circuit Court election. We decline the Judicial Tenure Commission's additional recommendation to conditionally suspend the respondent.

On the basis of Counts I and II, costs are imposed on the respondent judge in the amount of \$12,000. MCR 9.205(B).

This judgment is effective immediately.

Clifford W. Taylor
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STATE OF MICHIGAN

SUPREME COURT

In re Honorable BEVERLEY
NETTLES-NICKERSON, Judge, 30th
Circuit Court.

No. 133929

WEAVER, J. (*concurring in part and dissenting in part*).

I concur in the majority's decision and reasons for removing respondent Judge Beverley Nettles-Nickerson from her current position as judge of the 30th Circuit Court.

I dissent from the majority's decision to assess against the respondent any costs of the Judicial Tenure Commission proceeding. As I stated previously in regard to the proposed assessment of costs against a respondent judge:

[T]here is no constitutional authority to assess costs against a judge. Subsection 2 of Const 1963, art 6, § 30 provides that "the supreme court may censure, suspend with or without salary, retire or remove a judge" As I stated in my concurrence in *In re Noecker*, 472 Mich 1, 18-19 (2005), "Nothing in this constitutional provision gives this Court any authority to discipline the judge by assessing the judge the costs of the Judicial Tenure Commission proceedings against him or her." [*In re Trudel*, 477 Mich 1202, 1203 (2006) (Weaver, J., concurring).]

Further, as I stated in a subsequent order by a majority of this Court granting a default judgment against Judge Trudel:

While under Const 1963, art 6, § 30(2) the Supreme Court also has the authority to "make rules implementing this section [concerning the Judicial Tenure Commission]," the Supreme Court *cannot* create Judicial Tenure Commission rules that authorize the

Judicial Tenure Commission to recommend to the Supreme Court something that the Supreme Court does not have constitutional authority to do. The rule-making authority available to the Supreme Court is limited to making rules “implementing this section.” And, because “this section” provides that “the supreme court may censure, suspend with or without salary, retire or remove a judge,” this Court only has the authority to make rules implementing the section in connection with the *censure, suspension with or without salary, or retirement or removal of a judge*. Assessment and collection of costs is not included in this authority to discipline a judge. As the Supreme Court does not have authority to assess and collect costs granted to it by the Michigan Constitution, there is no corresponding rule-making authority to provide for the Judicial Tenure Commission to recommend to the Supreme Court the assessment and collection of costs against a respondent judge. This Court may not delegate authority that it lacks in the first place. [*In re Trudel*, 480 Mich 1213, 1214 (2007) (Weaver, J., dissenting).]

Thus, the majority’s use of its unconstitutional, law-creating court rule authorizing the assessment of costs against disciplined judges is an unrestrained interpretation of Const 1963, art 6, § 30. The majority of this Court should exercise judicial restraint in its interpretation of Const 1963, art 6, § 30 and leave it to the people of Michigan to decide, by constitutional amendment, if they want costs assessed against disciplined judges.

Additionally, given the vast power vested in the executive director and the general counsel of the Judicial Tenure Commission, and given the possibility of due process violations against a respondent judge, it is becoming apparent that the rules concerning the operation of the Judicial Tenure Commission, created by this Court pursuant to Const 1963, art 6, § 30, should be reexamined by this Court and the people.

Elizabeth A. Weaver